



# **Fitch, Even, Tabin & Flannery**

## *Intellectual Property Law*

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**Client/Matter Nos:** 77017

Date: October 28, 2005

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**Confirmation No.: 6489**

**Re:** U.S. Application No.: 10/696,284  
AKASHE, et al.

This transmission is being sent by ramon r. hoch, please call (202-419-7000) if there is a problem with this transmission.

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Ramon R. Hoch

**Attached Paper(s):**

**1) Statement of the Substance of the Interview (4 pages).**

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OCT 28 2005

PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: ) Confirmation No. 6489  
AKASHE, ET AL. )  
                      ) Attny. Dkt.: 77017  
                      )  
Serial No.: 10/696,284. ) Group Art Unit: 1761  
                      )  
Filed: October 29, 2003 ) Examiner: Weier, Anthony J.  
                      )  
For: )  
METHOD OF PREPARATION OF )  
HIGH QUALITY SOY CULTURED )  
PRODUCTS )

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

STATEMENT OF THE SUBSTANCE OF THE INTERVIEW

Sir:

This is responsive to the Official Action dated October 11, 2005, including an Interview Summary (form PTOL-413), and indicating applicants had a one month period of response in which to file a statement of the substance of the interview held between Applicants' undersigned representative and the examiner of record, Examiner Weier, on October 5, 2005.

Applicants' statement of the substance of the interview of October 5, 2005, is as follows:

1) Terminal Disclaimers

As discussed during the interview of October 5, 2005, Applicants' representative confirmed that appropriate Terminal Disclaimers had been filed on September 29, 2005 to overcome the obviousness-type double patenting rejections made in the final Office Action against instant claims 11-20 based on claims 12-22

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and 24-28 of assignee's copending application No. 10/655,478, and claims 1-22 of assignee's copending application No. 10/655,259.

In a follow-up telephonic discussion initiated by the examiner of record on October 7, 2005, the examiner requested that applicant submit additional Terminal Disclaimers to avoid additional prospective obviousness-type double patenting rejections which he otherwise would impose relative to assignee's copending application nos. 10/755,210 and 10/696,603. As indicated by examiner, these additional obviousness-type double-patenting rejections were considered appropriate by him as the two above-mentioned copending applications 10/755,210 and 10/696,603 also set forth method claims including a recitation regarding conducting ultrafiltration "while maintaining the pH in the range of about 9 to about 12," which is also recited in the instant method claims and was a subject of discussion during the Interview in respect of the separate art-based rejection. It was agreed that additional obviousness-type double patenting rejections would not be appropriate or applied based on assignee's copending application nos. 10/696,636, 10/654,769, and 10/655,210, which currently have various product claims under examination. On October 11, 2005, applicants complied with the examiner's request of October 7, 2005 and submitted the additionally requested Terminal Disclaimers, and also petitioned for an additional (second) extension month for response on October 14, 2005 to ensure that the submissions made October 11, 2005 were deemed timely.

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Applicants' representative argued during the interview that a *prima facie* case of obviousness had not been made against instant Claims 11-20 based on the combination of Goodnight Jr. and Cole.

In particular, Applicants' representative pointed out that pending independent claim 11, and all its depending claims 12-20, recite, among other features, conducting ultrafiltration "while maintaining the pH in the range of about 9 to about 12."

Applicants' representative pointed out that the instant specification explains the significance of this recited feature of the claimed method at page 11, lines 30-32. It also was pointed out that Example 1 of the instant application demonstrates the unexpected results and criticality associated with this feature of disclosure through comparative testing results.

Applicants' representative noted that Goodnight Jr. discloses, at col. 3, lines 39-42, conducting membrane filtration on a clarified extract that preferably is adjusted to a pH in the range of pH 6.5 to pH 7.5 prior to membrane filtration.

Applicants' representative also pointed out that Example 1 of Goodnight Jr. discloses that the extract charged to ultrafiltration process of that working example had a pH of 7.36, as indicated at col. 7, lines 21-23. It was noted by Applicants' representative that no ultrafiltration process pH value outside the 6.5 to 7.5 range was illustrated by Goodnight Jr.

Applicants' representative acknowledged that Goodnight Jr. also suggest that the 6.5 to 7.5 pH range for ultrafiltration "is not essential" at col. 3, lines 41-42, but that Goodnight Jr. provided no enabling disclosure or other guidance for practicing ultrafiltration outside the 6.5 to 7.5 pH range.

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Moreover, Applicants' representative pointed out that Goodnight Jr. expressly teaches away from using a pH other than 6.5 to 7.5 during ultrafiltration at col. 3, lines 42-46.

The examiner did not agree to indicate any allowance at the conclusion of the interview. However, the understanding of applicants' representative was that applicants' arguments were deemed promising by the examiner towards possibly advancing this case to allowance, but that the examiner's reconsideration and decision on patentability was subject to the examiner's completion of his review of Applicant's written response filed September 29, 2005, internal disposition at the US PTO of the submitted terminal disclaimers, and review of possibly related copending applications.

It is believed that the above represents an accurate record of the interview of interest.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Date: October 28, 2005

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